

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ZIH CORP.,

Plaintiff,

v.

PAXAR CORPORATION

Defendant.

CA No. 03-CV-12358-DPW
(Alexander, M.J.)

**DEFENDANT’S UNOPPOSED MOTION FOR LEAVE
TO FILE AN AMENDED ANSWER AND COUNTERCLAIM**

This is a civil action for patent infringement involving U.S. Patents Nos. 5,860,753 and 5,813,343 (the “‘753 and ‘343 patents,” respectively). Pursuant to FED. R. CIV. P. 15(a), Defendant Paxar Corporation (hereinafter “Paxar”) respectfully requests that this Court grant leave to file an Amended Answer and Counterclaims, attached as Exhibit A. Under Fed. R. Civ. P. Rule 15(a), leave to amend should be “freely given when justice so requires.” See Gonzalez-Perez v. Hospital Interamericano De Medicina Avanzada, 355 F.3d 1, 5 (1st Cir. 2004); Interstate Litho Corp. v. Brown, 255 F.3d 19, 25 (1st Cir. 2001).

The proposed amended pleading adds and/or clarifies Paxar’s defenses and counterclaims that both patents-in-suit are unenforceable due to Plaintiff’s unclean hands and inequitable conduct before the PTO. As set forth in the accompanying Memorandum in Support, Paxar respectfully submits that the Court should grant this motion for the following reasons. First, Plaintiff ZIH Corp. (“ZIH”) does not oppose Paxar’s motion. Second, it is still early in the litigation and neither party has taken any depositions and the request to amend the pleadings falls well before discovery would close. Third, as Plaintiff consents to the motion, there is no

prejudice in granting leave since the facts alleged are facts that are known to ZIH or should have been known to ZIH.

Further support for this motion appears in the accompanying memorandum of law. Accordingly, Paxar respectfully requests that the Court grant leave and accept the attached amended pleading (Exh. A) for filing.

LOCAL RULE 7.1 CERTIFICATE

Pursuant to Local Rule 7.1(a)(2), counsel for ZIH and Paxar have conferred on June 6 and 7, 2005, regarding this motion, and ZIH indicated that it does not oppose Paxar's motion for leave to file the amended pleading. Although ZIH does not oppose the motion, ZIH reserved its right to respond to the pleading itself.

Date: June 7, 2005

Respectfully submitted,

PAXAR CORPORATION
By its Attorneys,

/s/ Erik P. Belt

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